

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20026

OCT 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Petition of the People of the State of California)
 and the Public Utilities Commission of the State) PR Docket No. 94-105
 of California to Retain Regulatory Authority Over)
 Intrastate Cellular Service Rates)

**REPLY COMMENTS OF
U S WEST CELLULAR OF CALIFORNIA, INC.**

U S WEST Cellular of California, Inc. ("U S WEST") hereby submits its
 Reply Comments in the above-captioned proceeding.

The comments filed by the parties who support the California PUC
 ("CPUC") Petition share one common feature -- they fail to provide evidence to support
 the claim that market conditions in California require an eighteen-month extension of
 CPUC rate authority. Indeed, the supporting comments are most notable for their
absence of facts and evidentiary support. It is clear that these parties have acted to
 preserve their individual interests, without regard to Budget Act requirements.

● Cellular Resellers Association, Inc., et al. -- The principal
 argument made by the California resellers¹ is that cellular carriers will "immediately
 eliminate . . ." wholesale rates if state regulation is removed.² According to the resellers,
 without the rate differential their survival will be jeopardized -- to the detriment, they

¹ See Comments of Cellular Resellers Association, Inc., Cellular Service, Inc. and
 ComTech, Inc. ("CRA").

² See id. at 3.

claim, of competition.³ Despite this dire prediction, the resellers fail to provide any facts. There is no showing that wholesale rates will be ended upon the elimination of state rate authority; nor, for that matter, is there any showing that the predicted elimination of the wholesale rate differential will harm competition -- or consumers.

The resellers' unsupported claim is both counterintuitive and contrary to experience in those states where there is no local rate regulation. First, U S WEST's wholesale operations market in San Diego has been financially valuable. In U S WEST's annual reports to the CPUC, it has provided profit statements which show the value of the wholesale market.⁴ For this reason, it is not apparent why the resellers believe that the carriers will "immediately" act to eliminate the wholesale rate differential if CPUC rate regulation is ended.

Second, in states where there is no state regulatory requirement for maintenance of the wholesale rate differential, U S WEST (and other carriers) have offered bulk pricing plans -- which offer comparable savings for high volume customers, including resellers.⁵ Cellular carriers have every incentive to offer some form of "bulk" discount to large volume customers. In fact, competitive pressures drive such discounts.

³ See id. at 2-3.

⁴ These annual reports, filed with the CPUC, are public documents available for review by the resellers and any other interested parties.

⁵ Such bulk plans are available to resellers on a non-discriminatory basis, in accordance with Section 202 of the Communications Act. 47 U.S.C. § 202. Indeed, these plans are popular with resellers in other states.

Thus, and as discussed in the U S WEST Opposition, U S WEST affiliates offer a national bulk purchase plan program in states other than California.⁶ Under this program, large user customers and resellers have the option of buying service out of a bulk tariff, without any access charges and with reduced usage rates based on volume. This “best rate” offer is made available because of the substantial economies of scale based on the sale of large quantity cellular usage. The national bulk plan offers substantial savings to large customers, including resellers, from the single-unit retail price. Resellers in other unregulated states enjoy a sizeable margin under this plan. This purchase plan is not offered in California because of current wholesale regulatory restrictions. However, its presence in other states confirms that an equivalent bulk rate may well be maintained, even in the absence of state regulation.

In any event, as noted, the resellers have not shown why elimination of the wholesale rate differential will harm competition. In the end, it is clear that the resellers confuse the legitimate protection given to competition at the federal level with their desire to receive artificial protection for their individual business interests. The resellers are asking for a guaranteed margin or profit for their business. Nothing in the Budget Act would countenance such a result.⁷

⁶ See U S WEST Opposition at 11.

⁷ The National Cellular Resellers Association (“NCRA”) also filed one set of comments in support of the various state petitions. The NCRA Comments contain no state-specific or empirical evidence demonstrating market failure in California, and the Association’s generalized critique of the cellular duopoly structure does not meet Budget Act requirements for continued state rate authority.

● Utility Consumers Action Network (“UCAN”) and Towards

Utility Rate Normalization (“TURN”) -- The UCAN/TURN comments contain a number of untrue statements, which these groups do not even attempt to support. For example, UCAN/TURN argue that cellular carriers have tried to block competition and the entry of new wireless services.⁸ There is no basis for this statement; in fact, U S WEST knows of no such efforts. In addition, UCAN/TURN argue that, in the absence of CPUC rate regulation, cellular carriers “will likely” increase rates to “capture excessive economic rents . . .” prior to the entry of new wireless competitors.⁹ Once again, there is no basis for this reckless charge.

UCAN/TURN also argue that there have been no “sustained rate reductions of note” over the past 15 months in San Diego County.¹⁰ Yet, again, no factual support is presented to support this vague charge. In fact, U S WEST and the other California carriers have introduced numerous promotions which have provided rate reductions for cellular consumers -- in San Diego and throughout the state. For example, some 18 months ago U S WEST introduced a two-year pricing plan that dramatically reduced access charges on both the retail and wholesale sides.¹¹ Not surprisingly,

⁸ See UCAN/TURN Comments at 2-3.

⁹ See id. at 3.

¹⁰ Id. at 3.

¹¹ Under the two-year plan, standard monthly access charges were cut from \$35.00 to \$18.00 on the retail side; the wholesale monthly access charges were cut from \$24.60 to \$12.65.

UCAN/TURN ignore this. Moreover, and as documented in the U S WEST Opposition, intrusive CPUC rate regulation has in fact hampered carrier efforts to reduce rates.¹²

The passing reference to the UCAN state complaint against U S WEST is also improper.¹³ UCAN's allegations are not proven; these charges are denied by U S WEST. Thus, there is absolutely no basis for relying on this complaint as evidence supporting the CPUC Petition.¹⁴

Finally, UCAN/TURN argue that California's cellular customers are dissatisfied.¹⁵ Again, UCAN/TURN fail to support the charge of customer dissatisfaction. In fact, U S WEST's customers have indicated a high degree of satisfaction with the cellular service provided.¹⁶ For obvious business reasons, all California carriers continually work to ensure and to improve customer satisfaction. UCAN/TURN's charges are unfounded.

- Cellular Agents Trade Association -- CATA's allegations concerning various law suits filed against California cellular carriers do not make the

¹² See U S WEST Opposition at 5-12.

¹³ See UCAN/TURN Comments at 3 n. 3.

¹⁴ It should also be noted that a settlement is pending in this complaint proceeding; in the proposed settlement U S WEST does not admit any wrongdoing and, in fact, continues to deny the UCAN allegations.

¹⁵ See UCAN/TURN Comments at 4.

¹⁶ For business purposes, U S WEST regularly surveys its customers to determine customer satisfaction and to gauge ways to improve same.

claims raised true, and it must be emphasized that CATA has presented no facts to support its sweeping charges.¹⁷ None of these lawsuits have been litigated to judgment.

Similarly, CATA's claims about harm to the elderly and handicapped are also made without any citation or support.¹⁸ Contrary to CATA's claims, California's cellular carriers have offered low-cost security plans to meet the needs of low-usage subscribers. Indeed, CATA makes the remarkable admission that cellular agents do not spend time and money promoting such low-cost plans, when offered (allegedly because the commissions involved are too small).¹⁹

CATA's argument about improper commission payments to retailers is also unsupported.²⁰ If CATA is challenging the practice of paying preferred commissions to agents who handle more customers, that practice has occurred and is common in any number of businesses. Preferential treatment is routinely given to a company's largest customers -- surely there is nothing unusual or anti-competitive in this. Moreover, U S WEST does not bundle service and equipment in San Diego, and CATA's charge to this effect is categorically denied.²¹

¹⁷ See CATA Comments at 2-4.

¹⁸ See id. at 4-5.

¹⁹ See id. at 5.

²⁰ See id. at 5-6.

²¹ While U S WEST does not bundle service and equipment because of state regulatory restrictions, it does not agree that the practice is objectionable. In fact, the FCC has expressly approved the provision of bundled service and equipment. See Bundling of Cellular Customer Premises Equipment and Cellular Service, Report and Order, 7 FCC Rcd. 4028 (1992). Bundling practices are common in all other states and the practice has added many new cellular subscribers at

(continued...)

● Mobile Telecommunication Technologies Corp., et al. -- Finally, the other groups filing in support of the CPUC Petition are former private carrier service interests who have filed to seek Commission confirmation that other CMRS services will not be regulated by the state -- without regard to how cellular service is treated.²² The overriding concern of these parties is to avoid onerous state rate regulation for their own services; they fail to provide evidence in support of the CPUC Petition. Indeed, one commenter openly acknowledges the burden and cost imposed by state regulation and goes so far as to suggest that retaining regulatory constraints on cellular carriers -- but not on other new wireless entrants -- will improve the competitive prospects for new wireless services.²³ While uneven regulation may promote the financial interests of individual businesses or particular services, U S WEST submits that such a scenario would be entirely contrary to the Budget Act regulatory parity provisions.

In sum, the CPUC and the commenters supporting its Petition have failed to demonstrate that extended state cellular rate regulation is warranted. In fact, continued rate authority would impede competition and the development of wireless services. For

²¹ (...continued)
significant cost savings. See U S WEST Opposition at 9-10.

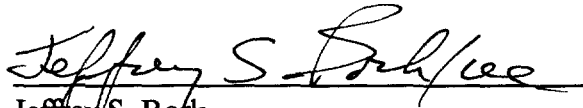
²² See Comments filed by Mobile Telecommunication Technologies Corp., Paging Network, Inc., American Mobile Telecommunications Association, Inc., E.F. Johnson Company and Nextel Communications, Inc.

²³ See Nextel Comments at ii, 14-15.

the reasons stated in the U S WEST Opposition and in other opposition filings, the CPUC
Petition should be denied.

Respectfully submitted,

U S WEST CELLULAR OF CALIFORNIA, INC.

A handwritten signature in dark ink, appearing to read "Jeffrey S. Bork", written over a horizontal line.

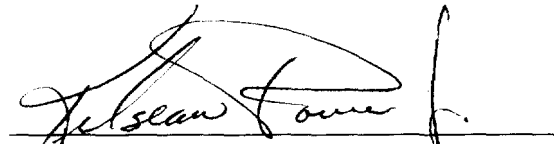
Jeffrey S. Bork
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036
(303) 672-2700

Laurie S. Bennett,
Of Counsel

October 19, 1994

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr. do hereby certify that on this 19th day of October, 1994,
I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST
CELLULAR OF CALIFORNIA, INC.** to be served via first-class United States
Mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

***Via Hand-Delivery**

(PR94105.COS/JB/lh)

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Andrew C. Barrett
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Gerald P. Vaughan
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*Ralph A. Haller
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

*John Cimko, Jr.
Federal Communications Commission
Room 644
1919 M Street, N.W.
Washington, DC 20554

*Edward R. Jacobs
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

*Regina Harrison
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

*David Furth
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

David A. Gross
Kathleen Q. Abernathy
AirTouch Communications
Suite 800
1818 N Street, N.W.
Washington, DC 20036

Edward W. O'Neill
Peter Arth, Jr.
Ellen S. LeVine
State of California Public Utilities
Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Howard J. Symons
James A. Kirkland
Cherie R. Kiser
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

MCCAW

James M. Tobin
Mary E. Wand
Morrison & Foerster
345 California Street
San Francisco, CA 94104-2576

MCCAW

Scott K. Morris
McCaw Cellular Communications, Inc.
5400 Carillon Point
Kirkland, WA 98033

Richard McKenna
GTE Service Corporation
600 Hidden Ridge
Irving, TX 75015-2092

William J. Sill
Christine M. Crowe
McFadden, Evans & Sill
Suite 810
1627 Eye Street, N.W.
Washington, DC 20006

GTE

Peter A. Casciato
Peter A. Casciato, P.C.
Suite 701
8 California Street
San Francisco, CA 94111

CRA

Lewis J. Paper
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, DC 20005

CRA

Michael F. Altschul
Randall S. Coleman
Andrea D. Williams
Cellular Telecommunications
Industry Association
Suite 200
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Michael B. Day
Michael J. Thompson
Jerome F. Candelaria
Wright & Talisman
Suite 225-Shell Building
100 Bush Street
San Francisco, CA 94104

CCAOC

David M. Wilson
David A. Simpson
Young, Vogl, Harlick & Wilson
Suite 2500
425 California Street
San Francisco, CA 94104
(2 copies)

BCTC
LCTC

Adam A. Andersen
Suzanne Toller
Bay Area Cellular Telephone
Company
Suite 1500
651 Gateway Boulevard
South San Francisco, CA 94080

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez
Suite 1200
1111 19th Street, N.W.
Washington, DC 20036

MTTC

Joel H. Levy
William B. Wilhelm, Jr.
Cohn and Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

NCRA

Michael Shames
Suite 105
1717 Kettner Boulevard
San Diego, CA 92101

UCAN & TURN

Richard Hansen
Cellular Agents Trade Association
Suite 201
11268 Washington Boulevard
Culver City, CA 90230

Mary B. Cranston
Megan Waters Pierson
Joseph A. Hearst
Pillsbury Madison & Sutro
P.O. Box 7880
San Francisco, CA 94120-7880

AIRTOUCH

Judith St. Ledger-Roty
James J. Freeman
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036

PNI

Alan R. Shark
American Mobile Telecom Association, Inc.
Suite 250
1150 18th Street, N.W.
Washington, DC 20036

Russell H. Fox
Susan H.R. Jones
Gardner, Carton & Douglas
Suite 900, East Tower
1301 K Street, N.W.
Washington, DC 20005

EFJC

Leonard J. Kennedy
Laura H. Phillips
Richard S. Denning
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, DC 20037

NEXTEL

Mark J. Golden
Personal Communications
Industry Association
Suite 1100
1019 19th Street, N.W.
Washington, DC 20036

Carressa D. Bennet
Suite 200
1831 Ontario Place, N.W.
Washington, DC 20009

RCA

Phillip L. Spector
Susan E. Ryan
Jon C. Garcia
Paul, Weiss, Rifkind
Wharton & Garrison
1615 L Street, N.W.
Washington, DC 20036

PAGEMART

Thomas J. Casey
Jay L. Birnbaum
Katherine T. Wallace
Skadden, Arps, Slate,
Meager & Flom
1440 New York Avenue, N.W.
Washington, DC 20005

LACTC